U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: SEP 18 2013 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, the petitioner seeks employment as an "Elementary Special Education Teacher" for [redacted] The petitioner has worked for [redacted] since 2007. At the time of filing, the petitioner was teaching at [redacted] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner has established that her work as a special educator is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner's work would be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. Assertions regarding the overall importance of an alien's area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on June 4, 2012. In Part 4 of the Form I-140, the petitioner answered "yes" to whether any petitions had previously been filed on her behalf. The record reflects that [redacted] filed a Form I-140 petition, with an approved labor certification, on her behalf on June 30, 2009, to classify her as a professional under section 203(b)(3)(A)(ii) of the Act. The Texas Service Center approved the petition on July 9, 2009, with a priority date of July 28, 2008.

In a May 30, 2012 letter accompanying the petition, counsel stated that the petitioner merits the national interest waiver due to "her Master's Degree in Special Education and more than twenty (20) years of . . . progressive teaching experience." Academic degrees and experience are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act.

The petition included "Personal Statement" signed by the petitioner, discussing her background, career, and teaching style. The petitioner stated:

> I am presently teaching special education students in [redacted] promoting hands on experiences in exploring and discovering ideas that could be retained in their minds in order for them to apply the things they learned in their daily lives. I make them aware too of how diverse our environment is and encourage them how to show respect one's culture and race in promoting harmony and progress in the economy. My dedication, experience, and knowledge is an enormous share to the continuous quest of this first class nation to advance, to transform lives in order to improve the educational achievement of the students. Encouraging students to use their full potential and be successful individuals are the things that [the petitioner] have [sic] been working on and wish to give.
>
> From the things mentioned, I would like to express my strong desire to avail a permanent residency here in the United States of America.

Regarding the petitioner's "strong desire to avail a permanent residency here in the United States of America," the petitioner was already the beneficiary of an approved immigrant petition almost three years before the filing date of the present petition. Therefore, the issue in the present petition is whether she qualifies for a higher classification than the one already granted to her. Approval of a second petition would not guarantee approval of an adjustment application. The approval of a visa

petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988).

In her statement, the petitioner did not mention the *NYSDOT* guidelines or explain how she meets them. The petitioner expressed general goals such as "promoting harmony and progress in the economy" and improving "the educational achievement of the students," but the record does not show how the petitioner's work would impact the field beyond [redacted]. With regard to the petitioner's special education teaching duties, there is no evidence establishing that the benefits of her work would extend beyond her students at [redacted] such that they might have a national impact. *NYSDOT*, 22 I&N Dec. at 217, n.3. provides examples of employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

In the present matter, the benefits of the petitioner's impact as a special educator would be limited to students at her school and, therefore, so attenuated at the national level as to be negligible. In addition, the record lacks specific examples of how the petitioner's work as a teacher has influenced the education field on a national level.

The petitioner submitted various letters of support discussing the petitioner's work as a special education teacher. Selected examples will be discussed to illustrate the nature of the references' claims.

[redacted], stated:

> [The petitioner] is an extraordinary member of our instructional team and makes a significant impact on student achievement on a daily basis.
>
> As a Special Educator, [the petitioner] uses her instructional expertise to modify the curriculum to meet the unique learning needs of her students. She serves as a valuable resource to general educators and helps support them in their use of differentiated instructional strategies. [The petitioner] actively communicates with parents and forms close relationships with her students. [The petitioner] fulfills all professional responsibilities and exceeds expectations.

> [The petitioner] has been with since 2007 and has taught students in Kindergarten and First Grade with ADHD, ADD, Speech Defects, Autism and Developmental Delay.

comments on the petitioner's work as a special educator at within the system, but fails to provide specific examples of how the petitioner's work has influenced the field as a whole. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *NYSDOT* at 219, n. 6.

, stated:

> [The petitioner] has been teaching at since August 2007. [The petitioner] is currently a kindergarten special education teacher who works with students with developmental delay, ADHD, behavioral problems, and autism. For the past four years, she was a teacher for students with autism who was responsible for teaching all academic subjects. In addition, [the petitioner] is responsible for modifying grade level instruction based on her students' IEP [Individualized Education Plan] goals and objectives. [The petitioner] implements lessons which provide for instruction at students' varying performance levels while still following our county's curriculum framework pacing progress guides. In her classroom, she maximizes the use of time for instructional purposes, with all students being involved in meaningful learning activities. [The petitioner] uses a wide range of assessment information, including teacher observations, student work, running records, and standardized test data, to regularly adjust student instruction.
>
> [The petitioner's] classroom is warm and inviting, and her students always display positive attitudes about learning and themselves. Fairness and consistency describe the way [the petitioner] deals with disciplinary matters in her classroom. She actively participates in grade level planning meetings, school improvement team meetings, multi-disciplinary team meetings, and school events and activities. She works cooperatively with administration, teachers, special education teachers, and English as a Second Language teachers, as well as parents, students, and other school staff members.
>
> [The petitioner] also demonstrates excellent professionalism. She is punctual every day and dresses in a professional manner. She balances the duties of her work day effectively and has a genuine upbeat attitude. She has received satisfactory evaluations and observations during her entire tenure at . [The petitioner] displays a strong personal commitment to the art of teaching and is a wonderful asset to our school staff.

The paragraphs quoted above in the January 23, 2012 letter from are identical to those in a March 18, 2012 letter from . The identical paragraphs in their letters suggest the language in at least one of the letters is not the author's own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an

immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

While it is acknowledged that and have provided their support to this petition, it appears that at least one of them did not independently prepare the full content of his or her letter. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In addition, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* Based on the identical paragraphs and letters, USCIS may accord them less weight. Regardless, neither of the assistant principals' letters demonstrates that the petitioner's work has impacted the field beyond

stated:

> I have had the pleasure of [the petitioner] as my son's Kindergarten teacher during 2010 - 2011 in . My son was very comfortable with her. I have seen her engaging the students with effective hands on materials to master concepts m math while I was observing the class.
>
> She is an excellent teacher loved by her students. She has taught first and Kindergarten students with autism, speech defects, ADHD, and developmental delay. She has been taking care of the challenging situations with patience and hard work.
>
> I hope that [the petitioner] would be able to continue to offer her services in the coming years, so that the students in would continue to benefit from her knowledge and experience.

speaks highly of the petitioner's interactions with kindergarten and first grade students, and her comments demonstrate that the petitioner works in an area of substantial intrinsic merit. However, comments do not indicate that the petitioner's work has influenced the field as whole, or that the petitioner has or will benefit the United States to a greater extent than other qualified special education teachers.

, Educational Autism Specialist, stated:

> [The petitioner] has worked in our county's autism program since the 2007-2008 school year. In that time, she has worked with children who have autism, Asperger's, ADD, ADHD, and other speech impairments. [The petitioner] has shown remarkable work ethic, kindness and wiliness [sic] to adapt to change. [The petitioner] has attended various trainings on ASD and

has always been an active participant. I have found that [the petitioner] will actively seek information to help make her class stronger. This is a huge strength for her. Her kindness and enthusiasm made her an asset to

comments on the petitioner's work experience, training, and effective teaching skills in the autism program, but she fails to provide specific examples of how the petitioner's work has influenced the field as a whole. As previously discussed, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT* at 221.

stated:

[The petitioner's] knowledge of students with autism is to be commended. She continues to help the students feel at ease and continuously builds their self-esteem along with the parents. She has excellent interactive skills with the parents which can be trying at times because of the students' special needs. The state of in particular, is in dire need for Special Education teachers, especially ones like the petitioner. would be at a loss without the services of [the petitioner].

asserted that the state of are "in dire need for Special Education teachers," but assuming the petitioner's teaching skills and experience are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *Id.* at 221.

, stated:

[The petitioner] has worked with since the beginning of the 2007 – 2008 school year. At I have seen her work as a special educator in the Elementary Autism Program, for which I am the Department Chair, as both a kindergarten and first grade teacher. [The petitioner] has clearly demonstrated high levels of patience, dedication, reliability, and an interest in further developing her repertoire of strategies, and techniques to work with children with special needs.

While the population which our program serves has primary educational disabilities of autism, they often have other disabilities in addition to the autism. This requires our teachers to have a broad reaching skill set to address a broad range of educational, social, and behavioral needs.

In addition, a teacher in our program must have excellent time management skills in order to juggle the varying needs of our students. . . . In addition to significantly modifying the

general education curriculum so these students can achieve academically, [the petitioner] also delivers directed social skills lessons.

comments on the petitioner's work as a special educator in the Elementary Autism Program at but does not indicate how the petitioner's impact or influence as a teacher is national in scope.

, Special Education Teacher, , stated:

I have known [the petitioner] since year 2007 when we worked together as first grade special education teachers in . . . . She attends professional trainings because she likes acquiring strategies as well as insights on how children learns and how she can be more efficient and be an effective teacher to special children. She teaches them songs and actions to enable them to remember concepts she taught them. She prepares her lessons including a lot of manipulative in order for the students [to] get a concrete experience for the abstract concepts she introduced to them. . . . She makes bulletin board displays and anchor charts that serve as a resource for the students to refer to whenever there is a need for recall since our students have deficits in memory. She does her work accurately with dedication, assessing each child thoroughly to show a vivid representation of the present level of each child so she will be able to develop a well-organized Individualized Educational Program for each child she is assigned as the case manager. She is very professional in her interactions not only with the students but with colleagues, administrators and parents as well.

discusses the petitioner's activities as a special educator and expresses admiration for the petitioner's teaching techniques, but comments do not set the petitioner apart from other competent and qualified teachers, or explain how the petitioner's work has impacted the field beyond her school.

, Occupational Therapist, stated:

I have worked with [the petitioner] for four years in the She is a teacher who has worked for that entire time with a specialized program for children with Autism Spectrum Disorder. She has been both a kindergarten teacher and a first grade teacher in small self-contained classrooms for children on this spectrum. She also accompanied her students [into] the general education classrooms when that was appropriate. She is familiar with the IEP process and has managed that process for her students.

[The petitioner] has been unfailingly kind and loving to her students and to her school peers. She has been proactive in advocating for her students and in working hard for them. She is flexible and dedicated to her job. As an Occupational Therapist consulting with her on behalf of her students she has been open to trying a variety of new Sensory Regulation techniques, and equally open to suggestions for modifying educational methods to suit the needs of individual students.

comments on the petitioner's teaching experience with autism students, and praises the petitioner's concern for her students and openness to suggestions, but fails to provide specific examples of how the petitioner's work has influenced the field as a whole

, Special Education Instructor, stated:

> I have co-taught classes with [the petitioner] in the Special Education program at . She is a real team player and always has the best interests of her students, and the school at large, at heart. She is a confident instructor and manages the classroom well. She, appropriately, commands respect, but is genuinely caring and interested in each of the students. Throughout the years [the petitioner] continued to develop a progressive approach towards teaching students with special needs, and has become very proficient at planning and teaching developmentally appropriate, hands-on, lessons. [The petitioner] collaborates with other educators to design and implement a series of lessons aimed at helping students with disabilities access the general education curriculum so that they may participate fully during the school day.

comments on the petitioner's teaching skills and activities at but does not indicate that the petitioner's work has had, or will continue to have, an impact beyond the students under her tutelage and the local school that employed her.

Professional School Counselor, stated:

> [The petitioner] has been a Special Educator in our building since 2007. . . . As a Special Education teacher she has been working with many students in diverse settings. [The petitioner] works with students with Autism, ADHD, ADD, speech delays, and developmental delays. She is professional in her demeanor, kind, and sensitive with our student students. She is hard working and fit in well with our students, staff, and teachers.

While describes the petitioner as a professional, kind, sensitive, and hard-working teacher at comments do not set the petitioner apart from other competent and qualified special education teachers, or explain how the petitioner's work has impacted the field beyond her school.

6th/7th Grade Reading, English and Language Arts Teacher, stated:

> She is employed as a Special Education Teacher in Kindergarten and First Grade at . Her duties include instruction within the Autism Program. The students she instructs include disabilities that include but are not limited to ADHD, ADD, developmentally delayed, and speech deficiencies.

I directly observed [the petitioner] two years ago when I was serving as the primary grade level Reading Specialist. I was impressed at the interactive instructional abilities displayed by [the petitioner]. She maintains an instructional environment conducive to learning given the limited abilities of her students. She provides a nurturing learning environment where students are challenged and willing to learn. She is a positive asset to the educational field. [the petitioner] works well with staff, parents, students, and administration.

[The petitioner] possesses outstanding artistic abilities. She enhances the presentation of lessons with visual support. This creative ability is a positive asset for all that are exposed to her instruction. [The petitioner] is a positive asset to our staff.

discusses the petitioner's work as a special educator at and praises the petitioner's teaching abilities, but fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

School Psychologist assigned to the from August 2009 – June 2011, stated:

As a member of the Autism Program staff, [the petitioner] works specifically with children in the elementary grades who are diagnosed as being on the Autism Spectrum (moderate to high functioning). [The petitioner] works with the children individually as well as within small groups in the Autism classroom in order to reinforce the general skills being taught in the general education classroom, (including social skills, math, reading and writing). In addition, she attends the general education classroom with the children in order to provide support to help them be successful in the general classroom setting.

I have worked with [the petitioner] within the scope of IEP meetings and Functional Behavior Assessment/Behavior Implementation Plan meetings in order to provide appropriate special education programming. Based on my work with her, she works well with the children, parents and other staff members and it appears that the students enjoy working with her as well.

comments on the petitioner's activities as a member of the Autism Program staff at , but does not explain how the petitioner's impact or influence as a special education teacher is national in scope.

School Counselor, , stated:

I have worked with [the petitioner] for the past 7 months as a professional colleague at . . . [The petitioner] works with First and Kindergarten students with autism, developmental delay, ADHD/ADD and speech defects.

During the time I have known [the petitioner], she has always been friendly, courteous and helpful in her interactions with students, parents and colleagues. [The petitioner] is a very

vital asset to in the direct services she provides to the Special Education Department and the students with specific learning disabilities.

While describes the petitioner as friendly, courteous, helpful, and "a very vital asset to comments do not indicate that the petitioner's work has influenced the field as whole, or that the petitioner has or will benefit the United States to a greater extent than other qualified special education teachers.

, Resident Ombudsman, , stated:

> [The petitioner] earned her Bachelor in Elementary Education with Honors on February 15, 1991 from S She passed the Board for Professional Teachers administered by the .
>
> She started working as a Private School Teacher at immediately after her graduation from college in Then she transferred to then in 1992 up to 1993 located in In 1993, she moved to also in the same city up to 1997. Also in the same year, she started working as a Public School Teacher in up to 2003. She left the Philippines and taught at the U.S.A. in September 2003. At present, she is working as a , U.S.A.
>
> I know [the petitioner] as a diligent and a very hardworking Teacher. While working as a Public School Teacher, she managed to finish her Masteral Degree in Special Education at the with honors.

comments on the petitioner's educational background and teaching experience. However, any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for alien labor certification. *NYSDOT* at 220-221. fails to provide specific examples of how the petitioner's work as a teacher has influenced the field as a whole. While the petitioner submitted documentation indicating that she presented a research project entitled ' in October 1999, there is no documentary evidence showing that her methodologies were implemented by substantial number of schools, were frequently cited by independent educational scholars, or otherwise notably influenced the field.

The preceding references praise the petitioner's teaching abilities and personal character, but they did not demonstrate that the petitioner's work has had an impact or influence outside of the schools

where she has worked. They did not address the *NYSDOT* guidelines which, as published precedent, are binding on all USCIS employees. *See* 8 C.F.R. § 103.3(c). That decision cited school teachers as an example of a profession in a field with overall national importance (education), but in which individual workers generally do not produce benefits that are national in scope. *NYSDOT* at 217, n.3.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner's references are not without weight and have been considered above. As previously discussed, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

The petitioner submitted the following:

1. A Certificate from [redacted] for participation in the [redacted]
2. Two certificates of appreciation "for supporting the feeding program" [redacted]
3. A February 26, 2012 letter from [redacted] confirming the petitioner's membership in the church;
4. A September 20, 2009 memorandum stating that the petitioner performed community service at [redacted];
5. A [redacted] published in the April 1, 1993 issue of [redacted] that identifies the petitioner along with numerous other starting teachers;
6. Documents indicating that the petitioner was awarded [redacted] on February 15, 1991 at her alma mater [redacted]
7. A May 2008 "Certificate of Appreciation" from the principal at [redacted] for the petitioner's "dedication to the students" of that school;
8. A January 28, 2012 Certificate of Excellence from the [redacted] "for sharing her expertise in [redacted];

9. An "Outstanding Service" certificate from the [redacted] "for her/his invaluable contribution in giving academic help to the students of [redacted] in conjunction with its [redacted]
10. A March 9, 2012 "Certificate of Recognition" from the principal at [redacted] in "recognition of his/her Noble Contributions as the Author and Organizer of [redacted] which has benefited the Students in the Autism Program at [redacted]
11. [redacted] with a validity period of July 1, 2007 – June 30, 2012;
12. New York City Department of Education License;
13. State of New York Public School Teacher Certificate;
14. Professional Teacher Certificate from the [redacted];
15. Certificate from the [redacted] stating that the petitioner "passed the PROFESSIONAL BOARD EXAMINATION FOR TEACHERS" on October 25, 1992;
16. An August 2, 2010 "Certification of Good Standing" from the [redacted]
17. Certificate of Membership for the [redacted] and
18. Employment verifications from various schools where the petitioner has taught.

Occupational experience, licenses, professional memberships, and recognition for achievements are all elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(B), (C), (E) and (F), respectively. As noted previously, exceptional ability in the sciences, the arts or business is not sufficient to warrant the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including alien employment certification). Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has failed to demonstrate that the awards she received have more than local or institutional significance. For instance, the petitioner's "Class Honors" award from [redacted] (item 6) reflects institutional recognition from her alma mater rather than a nationally significant award in the field of education. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *NYSDOT* at 219, n.6. There is no documentary evidence showing that items 1 – 18 are indicative of the petitioner's influence on the field of special education at the national level.

The petitioner also submitted copies of her "satisfactory" teacher evaluations and classroom observations from [redacted] and [redacted] New York. The petitioner, however, did not submit documentary evidence indicating that she has impacted the field to a substantially greater degree than other similary qualified special education teachers. Moreover,

there is no evidence showing that the petitioner's specific work has had significant impact outside of the schools where she has taught.

In addition, the petitioner submitted numerous certificates of participation and completion for training courses and seminars relating to her professional development. While taking courses and attending seminars are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

The director issued a request for evidence on September 17, 2012, instructing the petitioner to "submit evidence to establish that [the petitioner's] past record justifies projections of future benefit to the nation."

In response, counsel cited the No Child Left Behind Act (NCLBA) and other government initiatives to reform and improve public education. Counsel asserted that section 203(b)(2)(B)(i) of the Act does not contain clear guidance on eligibility for the waiver, and claims that Congress subsequently filled that gap with the passage of the NCLBA. Counsel noted that Congress passed the NCLBA three years after the issuance of *NYSDOT* as a precedent decision, and claims that "[t]he obscurity in the law that *NYSDOT* sought to address has been clarified," because "Congress has spelled out the national interest with respect to public elementary and secondary school education" through such legislation. Counsel, however, identified no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them.

Counsel did not support the assertion that the NCLBA modified or superseded *NYSDOT*; that legislation did not amend section 203(b)(2) of the Act. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not shown that the NCLBA indirectly implies a similar legislative change.

Counsel asserted that the benefit arising from the petitioner's work is national in scope because of the "national priority goal of closing the achievement gap." The record, however, contains no evidence that the petitioner's efforts have significantly closed that gap. The national importance of "education" as a concept, or "educators" as a class, does not establish that the work of one teacher produces benefits that are national in scope. *See NYSDOT* at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

Counsel continued:

> The national priority goal of closing the achievement gaps between minority and nonminority students, and between disadvantaged and more advantaged children is especially relevant in the context of [redacted] and [redacted]. The 2012 [redacted] Reading results show that out of the 24 [redacted] ranked near the bottom at the 'All Student' level for each [redacted]-covered grade level . . . .
>
> * * *
>
> Additionally, it is noteworthy that the updated 2012 [redacted] Report Card shows that [redacted] did not meet its Reading proficiency AMO targets . . . .

The petitioner has worked for [redacted] since 2007, and thus had been there for a number of years before the administration of the 2012 [redacted] tests. Counsel did not explain how the 2012 [redacted] results for [redacted] (which indicate low rankings relative to other [redacted] school districts) establish that the petitioner has played an effective role in "closing the achievement gap."

Counsel stated that the petitioner "is an effective teacher in raising student achievement in STEM" (science, technology, engineering and mathematics), but he cited no evidence to support that claim. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. In addition, while counsel asserted that the petitioner has "proven success in raising proficiency of her students," he did not point to specific STEM test results or other documentary evidence in the record to support the assertion. Regardless, there is no documentation demonstrating that the petitioner has had an impact or influence outside of [redacted].

Counsel asserted that providing "legal immigrant status for 'Highly Qualified Special Education Teachers' like [the petitioner] . . . will not only help improve the Education in the country but more importantly serve as 'key to the nation's economic prosperity.'" Counsel did not explain how the actions of one teacher would contribute significantly to improving the national educational system or the U.S. economy. Congress could have created a blanket waiver for special education teachers, but did not do so. Instead, the job offer requirement applies to members of the professions (such as public school teachers) and to aliens of exceptional ability (*i.e.*, foreign national workers who show a degree of expertise significantly above that ordinarily encountered in a given field).

Counsel stated that the labor certification requirement is deficient because, for labor certification purposes, the U.S. Department of Labor considers a bachelor's degree, rather than a master's degree and experience, to be the minimum educational requirement for a special education teacher. The petitioner submitted information from the *Occupational Outlook Handbook* describing what the U.S. Department of Labor considers to be the minimum qualifications necessary to become a special education teacher:

Public school teachers are required to have a least a bachelor's degree and a state-issued certification or license.

* * *

Education

All states require public special education teachers to have at least a bachelor's degree. Some of these teachers major in elementary education or a content area, such as math or chemistry, and minor in special education. Others get a degree specifically in special education.

* * *

Some states require special education teachers to earn a master's degree in special education after earning their teaching certification.

* * *

Licenses

All states require teachers in public schools to be licensed. A license is frequently referred to as a certification.

* * *

Requirements for certification vary by state. However, all states require at least a bachelor's degree. They also require completing a teacher preparation program and supervised experience in teaching, which is typically gained through student teaching. Some states require a minimum grade point average.

Many states offer general special education licenses that allow teachers to work with students across a variety of disability categories. Others license different specialties within special education.

Teachers are often required to complete annual professional development classes to keep their license. Most states require teachers to pass a background check. Some states require teachers to complete a master's degree after receiving their certification.

Some states allow special education teachers to transfer their licenses from another state. However, some states require even an experienced teacher to pass their own licensing requirements.

> All states offer an alternative route to certification for people who already have a bachelor's degree but lack the education courses required for certification. Some alternative certification programs allow candidates to begin teaching immediately, under the close supervision of an experienced teacher.

Counsel emphasized "the critical timeline" and "time-sensitive obligation" for hiring "Highly Qualified Teachers,'" and claimed that the labor certification process cannot accommodate this need because "[t]he United States Department of Labor minimum education requirement for Special Education Teacher is just a bachelor's degree."

Section 9101(23) of the NCLBA defines the term "Highly Qualified Teacher." Briefly, by the statutory definition, a "Highly Qualified" elementary school teacher:

- has obtained full State certification as a teacher or passed the State teacher licensing examination, and holds a license to teach in such State;
- holds at least a bachelor's degree; and
- has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum, or (in the case of experienced teachers not "new to the profession") demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation.

Section 9101(23)(A)(ii) of the NCLBA further indicates that a teacher is not "Highly Qualified" if he or she has "had certification or licensure requirements waived on an emergency, temporary, or provisional basis."

The petitioner has not established that the "Highly Qualified" standard involves requirements that are significantly more stringent than those outlined in the *Occupational Outlook Handbook*, or that a public school could not obtain a labor certification for a "Highly Qualified Teacher." Indeed, the petitioner's own approved labor certification required her to hold a bachelor's degree in education or social studies, and to "have or be immediately eligible for Maryland Teaching Certificate," elements consistent with the "Highly Qualified" designation. Thus, the petitioner's level of education and experience are not required for "highly qualified" status under the NCLBA. Counsel, therefore, did not support the claim that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers."

Counsel stated that a waiver would ultimately serve the interests of United States teachers, because if schools "fail to meet the high standard required under the No Child Left Behind (NCLB) Law," the result would be "not only . . . closure of these schools but [also] loss of work for those working in those schools." Counsel does not document "closure of . . . schools" for failing to meet NCLBA requirements, and the record does not show that the petitioner's work has brought [redacted] schools closer to meeting the NCLBA requirements.

Counsel further stated:

> [The petitioner] is firmly committed to teaching at . However, is currently barred for a two-year period . . . from filing any employment-based immigrant and/or nonimmigrant petition pursuant to the terms of a settlement agreement it had entered into with the United States Department of Labor arising from willful violations of the H-1B regulations at 20 C.F.R. Part 655, subparts H and I.

The U.S. Department of Labor invoked the debarment provisions of section 212(n)(2)(C)(i) of the Act against owing to certain immigration violations by that employer. As a result, between , USCIS cannot approve any employment-based immigrant or nonimmigrant petitions filed by [1] This debarment means that is, temporarily, unable to file its own petition on the alien's behalf for a classification other than the one for which she was already approved, and thus explains why labor certification is not an option in the short term. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the alien will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT* at 218, n.5. Any waiver must rest on the petitioner's individual qualifications, rather than on the circumstances that (temporarily) prevent from filing a petition on her behalf.

Counsel stated that another teacher received a national interest waiver, and asked that the present petition "be treated in the same light." Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). While AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished service center decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c). Furthermore, counsel provided no evidence to establish that the facts of the instant petition are similar to those in the unpublished decision. Without such evidence, the assertion that both cases merit the same outcome is unwarranted. The only stated similarity is that the beneficiary of the approved petition is "also a teacher in System."

The petitioner submitted a duplicate of first letter bearing a new date of November 28, 2012; a Certificate with a validity period from July 1, 2012 – June 30, 2017; and the July 9, 2009 "Approval Notice" for the Form I-140 petition filed on the petitioner's behalf seeking to classify her as a professional under section 203(b)(3)(A)(ii) of the Act, but none of these documents demonstrates the petitioner's eligibility for a national interest waiver.

In addition, the petitioner submitted public school progress reports for and ; 2012 Reading results for and public schools; President George H.W. Bush's "Remarks on Signing the Immigration Act of 1990";

[1] The list of debarred and disqualified employers is available on the U.S. Department of Labor's website. *See* http://www.dol.gov/whd/immigration/H1BDebarment.htm, accessed on July 22, 2013, copy incorporated into the record of proceeding.

information about Public Law 94-142; a copy the Supreme Court decision in *Brown v. Board of Education*, 347 U.S. 483 (1954); a copy of Section 1119 of the NCLBA; a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results; a September 26, 2011 article in *Education Week* entitled "Shortage of Special Education Teachers Includes Their Teachers"; an article entitled "STEM Sell: Are Math and Science Really More Important Than Other Subjects?"; "Barack Obama on Education" questions and answers posted at www.ontheissues.org; information about STEM fields printed from the online encyclopedia *Wikipedia*; an article entitled "Special Education Teacher Retention and Attrition: A Critical Analysis of the Literature"; an abstract for a report entitled "SPeNSE: Study of Personnel Needs in Special Education"; an article in the *Wall Street Journal* entitled "The Importance of Math & Science in Education"; an article in *Computer Science Technology* entitled "Importance of Science and Math Education"; and the written testimony of Microsoft's Bill Gates before the Committee on Science and Technology of the United States House of Representatives (March 12, 2008). As previously discussed, general arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field. *NYSDOT* at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. None of the preceding documents demonstrate that the petitioner's specific work as a special educator has influenced the field as a whole.

The director denied the petition on January 9, 2013. The director found that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States. The director indicated that the petitioner had not shown that her work as a teacher would be national in scope. In addition, the director stated that the letters of support submitted by the petitioner did not show that she "has influenced the field" or "will present a significant benefit to the field."

On appeal, counsel asserts that "USCIS erred in giving insufficient weight to the national educational interests enunciated in the No Child Left Behind Act of 2001 as the guiding principle rather than the precedent case" *NYSDOT*. Counsel, however, does not point to any specific legislative or regulatory provisions in the NCLBA that exempt foreign school teachers from *NYSDOT* or reduce its impact on them. It is within Congress's power to establish a blanket waiver for teachers, "highly qualified" or otherwise, but contrary to counsel's assertions, that waiver does not yet exist. With regard to following the guidelines set forth in *NYSDOT*, by law, the USCIS does not have the discretion to ignore binding precedent. *See* 8 C.F.R. § 103.3(c).

Counsel further states:

> With respect to the E21 visa classification, INA § 203(b)(2)(A) provides in relevant part that: "Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the **national . . . educational**

> **interests**, . . . of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

Counsel, above, highlights the phrase "national . . . educational interests," but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien's "services . . . are sought by an employer in the United States." Counsel has, thus, directly quoted the statute that supports the director's conclusion. By the plain language of the statute that counsel quotes on appeal, an alien professional holding an advanced degree is presumptively subject to the job offer requirement, even if that alien "will substantially benefit prospectively the national . . . educational interests . . . of the United States." Neither the Immigration and Nationality Act nor the NCLBA, separately or in combination, create or imply any blanket waiver for foreign teachers.

Counsel states that the director's "decision did not present even one comparative candidate having at least the equivalent accomplishment as that of [the petitioner] to support its determination." Counsel's assertion rests on the incorrect assumption that the *NYSDOT* guidelines amount to an item-by-item comparison of an alien's credentials with those of qualified United States workers. The key provision, however, is that the petitioner must establish a record of influence on the field as a whole. There is no provision in the statute, regulations, or *NYSDOT* requiring the director to specifically identify other equally qualified special educators. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Counsel asserts that the director "erred in disregarding evidence demonstrating the national scope of the petitioner's proposed benefit through her effective role in serving the national educational interest of closing the achievement gap." The overall importance of closing the achievement gap between minority and nonminority students does not imply that any one teacher will play a nationally significant role by educating her students in subject areas where performance deficiencies exist. Again, general arguments regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. *NYSDOT* at 217. Regardless, as previously discussed, there is no documentary evidence showing that the petitioner has played an effective role in "closing the achievement gap" in or nationally.

As evidence of the petitioner's "past history of achievement," counsel points to the petitioner's graduate research project entitled As previously discussed, there is no documentary evidence showing that petitioner's methodologies were implemented by a substantial number of schools, were frequently cited by independent educational scholars, or otherwise notably influenced the field. Counsel also points to the petitioner's "Certificate of Recognition" from her principal for "contributions as the ' ' the petitioner's "Certificate of Excellence" from the 'for sharing her expertise in '

the petitioner's "Outstanding Service" certificate from the for her "contribution in giving academic help to the students of in conjunction with its Year 2011 – 2012," and the petitioner's "Certificate of Appreciation" from the principal at for the petitioner's "dedication to the students" of that school. The preceding awards are local in nature or limited geographically to the state of , and do not show that the petitioner has had a wider impact on the field of special education. There is no documentary evidence demonstrating that any of the awards received by the petitioner are national in scope and indicative of her influence on the field as a whole.

In addition, counsel points to the April 1, 1993 that identifies the petitioner along with numerous other starting teachers and documents indicating that the petitioner was awarded "Class Honors" at the As previously discussed, none of this documentation is sufficient to demonstrate the petitioner's influence on the field of special education at the national level. Counsel also points to the petitioner's "satisfactory" ratings and classroom observations from New York, but there is no documentary evidence showing that the petitioner's specific work has had significant impact outside of the schools where she taught or that her work has influenced the field to a substantially greater degree than that of other special educators.

Counsel contends that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers. Once again, counsel's contention rests on the incorrect assumption that the *NYSDOT* guidelines amount to an item-by-item comparison of an alien's credentials with those of qualified United States workers. The pertinent eligibility factor set forth in *NYSDOT*, however, is that the petitioner must demonstrate a record of influence on the field as a whole. Such a requirement does not necessitate a review of other special education teachers' credentials.

Counsel claims that "the Immigration Service is requiring more from the beneficiary's credentials and tantamount to having exceptional ability," even though one need not qualify as an alien of exceptional ability in order to receive the waiver. As previously discussed, the threshold for exceptional ability is separate from the threshold for the national interest waiver. It remains that the petitioner's evidence does not facially establish eligibility for the national interest waiver. The director did not require the petitioner to establish exceptional ability in her field. Instead, the director observed that the petitioner's evidence does not show that the petitioner's work has had an influence beyond the school system that employed her.

Counsel states that the labor certification guidelines "require only a bachelor's degree," and therefore "may not meet the objective of employers to hire highly qualified teachers pursuant to No Child Left Behind." On page 14 of the appellate brief, however, counsel acknowledges that the statutory definition of a "Highly Qualified Teacher" requires only a bachelor's degree. Counsel does not reconcile these contradictory claims.

Counsel cites to several studies pointing to a high turnover rate among special education teachers. As previously discussed, a shortage of qualified workers in a given field is an issue that falls under the jurisdiction of the Department of Labor through the alien employment certification process. *NYSDOT* at 221. At best, this information shows that there is a demand for credentialed special education teachers, a demand that the labor certification process can – and, in this instance, did – address. Counsel, in effect, claims that the petitioner would have difficulty obtaining a benefit that she has, in fact, already secured.

Much of the appellate brief consists of general statements about educational reform and discussion of perceived flaws in the labor certification process. The petitioner, however, has not established that Congress intended the national interest waiver to serve as a blanket waiver for special education teachers. USCIS grants national interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization. *Id.* at 217.

It is evident from a plain reading of the statute that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *Id.* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole."). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende* at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.